

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HARVEY PATRICK SHORT,

Plaintiff,

v.

OFFICER WEBB, *et al.*,

Defendants.

CIVIL ACTION
NO. 18-4130

ORDER

AND NOW, this 20th day of September, 2019, upon consideration of the motion to dismiss Plaintiff's Second Amended Complaint by Defendants Parole Agent Miller, Corrections Officer Webb, and PREA Compliance Officer Owens (ECF No. 14), Plaintiff's Responses (ECF Nos. 19 and 22) and Defendants' Reply (ECF No. 23), it is **ORDERED** that the **motion is GRANTED in part** and **DENIED in part** as follows:

1. The Motion is **DENIED** to the extent that it seeks to dismiss Plaintiff's complaint pursuant to 28 U.S.C. § 1915(g);
2. The Motion is **DENIED** to the extent that it seeks to dismiss Plaintiff's claims against Defendant Miller pursuant to the Fourth and Eighth Amendments and for assault, battery, and intentional infliction of emotional distress;
3. The Motion is **GRANTED** to the extent that it seeks to dismiss Plaintiff's claims that Defendants violated his rights under the Fourteenth Amendment. Plaintiff's Fourteenth Amendment claims are **DISMISSED**.

Plaintiff may amend his Fourteenth Amendment claim against Defendant Webb, but only to the extent that he is able to assert sufficient facts to support a claim for denial of access to the courts. Plaintiff's other Fourteenth Amendment claims are dismissed with prejudice;

4. The Motion is **GRANTED** to the extent that it seeks to dismiss Plaintiff's other claims against Defendant Webb. Plaintiff's claims against Webb pursuant to the First, Fourth and Eighth Amendments and for assault, battery and intentional infliction of emotional distress are **DISMISSED** with leave to amend to the extent Plaintiff can allege facts sufficient to state claims against Webb. The following claims are **DISMISSED** with prejudice: (1) Plaintiff's claim against Webb for a violation of PA DOC Policy DC-ADM-203; and (2) Plaintiff's claim against Webb for medical malpractice.
5. The Motion is **GRANTED** to the extent that it seeks to dismiss Plaintiff's claims against Defendant Owens. Plaintiff's claims against Owens are **DISMISSED** with leave to amend to the extent Plaintiff can allege facts sufficient to state a First Amendment retaliation claim against Owens.

Plaintiff may further amend his claims on or before October 7, 2019 if he is able to do so consistent with this Order and the accompanying Memorandum of Law. If Plaintiff files a Third Amended Complaint, Defendants shall file a responsive pleading within fourteen days thereafter. If Plaintiff elects not to file a Third Amended Complaint, he shall file a notice of his intent to stand on the remaining claims in his Second Amended Complaint on or before October 7, 2019.

It is **FURTHER ORDERED** that Plaintiff's Motion for Appropriate Relief and/or Relief from Application of Three (3) Strike Rule (ECF No. 24) is **DENIED** as moot.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.